



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

HD:hd  
Docket No: 02183-99  
21 January 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: LT [REDACTED], CHC, USN [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 24 Mar 99 w/attachments  
(2) PERS-311 memo dtd 27 Aug 99  
(3) PERS-85 memo dtd 12 Oct 99  
(4) Subject's counsel's ltrs dtd 17 Dec 99 w/enclosures  
and 20 Dec 99  
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the original fitness report for 1 February to 16 June 1995, and inserting in its place a supplemental report for the same period, so that the supplemental report will be the only report in the record for this period. Copies of the original report, the transmittal letter forwarding the supplemental report, and the supplemental report are in enclosure (1) at Tabs A, B and C, respectively. Petitioner further requested that his failures of selection for promotion before the Fiscal Year (FY) 98, 99 and 00 Staff Lieutenant Commander Selection Boards be removed, so as to be considered by the selection board next convened to consider officers of his category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade. He also requested consideration by a special selection board. Because of the failures of selection for promotion, he was scheduled to be involuntarily discharged on 31 August 1999. He has been approved for continuation on active duty until 31 August 2001.

2. The Board, consisting of Messrs. Lightle, McCulloch and Tew, reviewed Petitioner's allegations of error and injustice on 13 January 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner's counsel contends that the narrative in the contested original fitness report contained "subtle negatives" which were not consistent with his performance, the marks assigned in the report, or his record in general. The reporting senior has submitted a revised report with a letter stating that the original narrative was inconsistent with the grading and promotion recommendation; that some of the phrases can be interpreted as less than complementary; that this was not his intention, but it was his intention to use only the utmost complimentary terminology to match the grading; and that he feels Petitioner has been dealt a disservice by the contents of the previous submission. Counsel contended that Petitioner's failures of selection for promotion warranted removal, not only because of the harmful narrative in the contested original fitness report, but also because of alleged discrimination against Petitioner's religious denomination and favoritism toward other denominations, as well as the standard instructions to the promotion boards concerning women and minorities. Counsel argued to the effect that such instructions amount to reverse gender and racial discrimination against officers who, like Petitioner, are neither women nor minorities.

c. In correspondence attached as enclosure (2), the Navy Personnel Command (NPC) office having cognizance over fitness report matters has commented that only the front page of the original fitness report in question is on file in Petitioner's record. Citing the reporting senior's stated basis for submitting a revised report, they recommended that the second page of the supplemental fitness report for the period in question be placed in Petitioner's record. They concluded by stating "We have no objections for the consideration of removal of the member's fail to select and the possibility of convening a special selection board."

d. In correspondence attached as enclosure (3), the NPC office having cognizance over active duty promotions has recommended that Petitioner's failures of selection before the FY 98, 99 and 00 Staff Lieutenant Commander Selection Boards be removed, but that his request for a special selection board be denied. They commented that "Based on the modification to his record addressed in [enclosure (2)], the overall quality and competitiveness of his record improves." They noted that he has been approved for continuation on active duty until 31 August 2001, and that removing his failures of selection will enable him to go before the next regularly scheduled promotion board as an "above zone not previously considered eligible" officer. They further noted that the FY 01 Staff Lieutenant Commander Selection Board is scheduled to convene on 15 May 2000. They concluded that since the regular board will meet before the next scheduled special selection board, special board consideration "should not be warranted." They further stated Petitioner's belief that he was denied proper consideration for promotion by reason of racial, gender and religious discrimination is unsubstantiated.

e. Enclosure (4) is correspondence from Petitioner's counsel in reply to the advisory opinions at enclosures (2) and (3). Counsel expressed agreement with the recommendation in enclosure (2) to correct Petitioner's fitness report record, the recommendation in enclosure (3)

to remove Petitioner's failures of selection for promotion, and what he understood to be an affirmative recommendation, in enclosure (2), that Petitioner be granted a special selection board. Further regarding enclosure (3), counsel argued that Petitioner should be considered as "in zone" and not as "above zone not previously considered eligible." He maintained "in zone" status would give Petitioner the best opportunity to have a fair consideration of his amended record, while consideration as "above zone" would be very prejudicial. Counsel's argument does not take into account that the "above zone" status is unavoidable without changing Petitioner's date of rank, to his detriment, to make him more junior; and that the designation as "not previously considered eligible" clarifies Petitioner is to be considered as not having failed of selection. Counsel expressed confidence that Petitioner's corrected record reflecting his actual performance would meet all criteria for selection if compared to the other FY 98 profiles in a non-discriminatory manner. Finally, counsel disagreed with the statement, in enclosure (3), that Petitioner's allegations of racial, gender, and religious discrimination are unsubstantiated.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief.

They substantially concur with enclosure (2) in finding that the second page of the supplemental fitness report should be filed in Petitioner's record with the first page of the original report. They further concur with enclosure (3) in finding that Petitioner's failures of selection for promotion should be removed, that he should be considered by the regular promotion board as "above zone not previously considered eligible," and that his request for a special selection board should be denied.

In view of the above, the Board directs the following limited corrective action:

#### RECOMMENDATION:

- a. That Petitioner's naval record be corrected by filing, with the first page of his original fitness report for 1 February to 16 June 1995, signed by Captain C. R. DeKrey, USN and dated 7 June 1995, the second page, to be forwarded by this Board, of the supplemental report covering the same period.
- b. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to lieutenant commander as an officer who is above zone but not previously considered eligible, that is, as an officer who has not failed of selection for promotion to lieutenant commander.
- c. That any discharge or other action based in any way on Petitioner's failures of selection before the FY 98, 99 and 00 Lieutenant Commander Staff Selection Boards be cancelled and, if necessary, that related documentation be removed from his record.

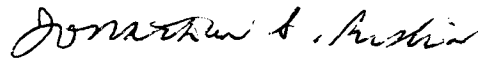
d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

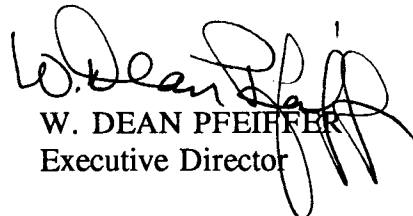
f. That Petitioner's request for a special selection board be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
JONATHAN S. RUSKIN  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

  
W. DEAN PFEIFFER  
Executive Director

## 28. DUTIES ASSIGNED (Continued)

Officer-5. Job: Visit patients, instruct and counsel Hospital Corps School Students and staff, conduct services, counsel and instruct Alcohol Rehabilitation and Psychiatry patients, vote at area Family Advocacy Committee, stand area chaplain duty watch, manage special projects.

88. COMMENTS. Particularly comment upon the officer's overall leadership ability, personal traits not listed on the reverse side, and estimated or actual performance in combat. Include comments pertaining to unique skills and distinctions that may be important to career development and future assignment. A mark in boxes with an asterisk (\*) indicates adversity and supporting comments are required.

Absolutely outstanding professional in every sense of the word. Extremely competent, pro-active, resourceful producer. Boundless leadership qualities, with a caring heart for people of every culture and situation. The consummate Pastor's Heart. Leading Physical Fitness program by example. Plans and executes every project with a visionary goal to involve the maximum number of personnel. He includes all subordinates and seniors in planning, budgeting and staffing - ensuring that all milestones are reached on the trajectory toward success. Equipped with a warm personable concern for individuals, his sense of humor, insight in interpersonal dynamics, and deep faith earn him the respect and confidence of the entire command. The following accomplishments outline his considerable and positive effect on this command:

- Conceived and implemented the weekly "Sources of Strength" program, enabling patients and staff the opportunity to discuss religious and Spiritual issues; including videos/refreshments;

- Designed extremely effective 'Chaplain's Hour' weekly lecture in the Alcohol Rehab Ward, spawning follow-on discussions on topics such as: Grief, Loss, Guilt, Forgiveness, Love, Faith, and Relationships;

- Directed "Single People" monthly video series on developing wholesome dating skills, Spirituality, and relational tools for the enhancement of social bonding;

- Developed the National Prayer Breakfast into an area-wide joint command sponsorship. As the Project Officer, he elicited the participation of over 100 people, guest musicians, and the Center Commander;

- Executed numerous community events, from the Holocaust Commemoration, Ramadan, and Memorial Day observance, and Martin Luther King, Jr. celebration - all involving hundreds of personnel and their dependents.

Integrated, industrious, aggressive, and yet sensitive, devout and creative, Chaplain [redacted] has exhibited an enthusiasm towards life in general and to this command in particular. He has absolutely unlimited potential for far greater ministry to the sea services; and I would covet the opportunity to serve with him in any military milieu whatsoever - particularly in a combat situation. Because of these examples of his selfless devotion, [redacted] is most strongly recommended for accelerated promotion to Lieutenant Commander - ahead of his peers, and for follow-on orders to the Chief of Chaplains office.



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

1611  
PERS-311  
27 August 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: L [REDACTED], CHC, USNR [REDACTED]

Ref: (a) BUPERSINST 1611.17 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 February 1995 to 16 June 1995 and replace it with a supplemental report for the same period.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed only the front page of the fitness report in question to be on file in the member's digitized record. The member provided a copy of the original fitness report, undated supplemental fitness report and undated cover letter with his petition.

b. The reporting senior submitted a supplemental fitness report and the required cover letter stating the reason for the submission of the supplemental fitness report. The supplemental report changes block-88 Comments, because the reporting senior indicated the phrases could be interpreted as less than complimentary, which he intended to use the utmost complimentary terminology.

c. Further review of the member's record revealed the back page of the following fitness reports missing from the member's record: 2 July 1994 to 31 January 1995, 17 June 1995 to 31 January 1996, and 1 February 1997 to 22 October 1997. If the member will forward the missing reports, we will file them in the member's digitized record.

d. Lieutenant [REDACTED] states that there is an obvious weakness in his fitness report for the period in question, which contributed to his twice failure of selection. It has long been our position that failure of selection is not sufficient reason to remove or change a report.

e. The report was filed due to administrative mishandling.

3. In view of the above, we recommend the second page of the supplemental fitness report for the period 1 February 1995 to 16 June 1995 included in the member's petition be placed in the member's record.

4. The member indicated he failed to select to 04 off the FY-98 and FY-99 Active Lieutenant Commander selection Board. We have no objections for the consideration of removal of the member's fail to select and the possibility of convening a special selection board.

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Head, Performance  
Evaluation Branch

2183-99



**DEPARTMENT OF THE NAVY**  
**NAVY PERSONNEL COMMAND**  
**5720 INTEGRITY DRIVE**  
**MILLINGTON TN 38055-0000**

5420  
Ser 85/217  
12 Oct 99

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LT [REDACTED] CHC, USNR, [REDACTED]

Ref: (a) PERS-311 memo 1611 of 27 Aug 99

Encl: (1) BCNR File

1. Enclosure (1) is returned recommending removal of [REDACTED] failures of selection before the FY-98, FY-99, and FY-00 Active Staff Lieutenant Commander Promotion Selection Boards. Based on the modification to his record addressed in reference (b), the overall quality and competitiveness of his record improves. He has been approved for retention on active duty until 31 August 2001. Removing his failures of selection will enable him to go before the next regularly scheduled promotion selection board as an above zone not previously considered eligible officer. The FY-01 Active Staff Lieutenant Commander Promotion Selection Board is scheduled to convene on 15 May 2000. Since the regular board will meet prior to the next scheduled special promotion selection board, special board consideration should not be warranted.

2. As to [REDACTED]'s belief that he was denied proper consideration due to racial, gender, and religious discrimination, his claim is unsubstantiated. Further, special selection boards are provided with identical information and Secretary of the Navy guidance that the regular board it attempts to reproduce (i.e. a FY-98 Lieutenant Commander Chaplain Corps special selection board would be provided with the precept and all Secretarial guidance that the FY-98 Lieutenant Commander Chaplains Corps Promotion Selection board was provided). Consequently, a special board that considers [REDACTED]'s record would be given the information concerning review of women and minority records that the regular board was given. Moreover, while [REDACTED]'s request included special membership consideration, selection board composition is governed by 10 USC § 612 and SECNAVINST 1401.3.

3. Recommend [REDACTED] request for a special selection board be disapproved. Recommend that his failures of selection before the FY-98, FY-99, and FY-00 Active Lieutenant Commander Staff Promotion Selection Boards be removed, thus, allowing his record to be reviewed as an above zone not previously considered eligible officer before the FY-01 board.

[REDACTED]  
BCNR Liaison, Officer Promotions  
and Enlisted Advancements Division